**GOO SING KAR**

**v.**

**DATO' LIM AH CHAP & ORS**

COURT OF APPEAL, PUTRAJAYA
ABDUL MALIK ISHAK JCA
CLEMENT SKINNER JCA
MOHAMAD ARIFF YUSOF J
[CIVIL APPEAL NO: C-02-119-2008]
5 OCTOBER 2012

***CIVIL PROCEDURE:*** *Damages - Assessment of damages - Appeal against - Undertaking to pay damages in relation to four interim injunctions that were subsequently set aside - Injunctions obtained by deceit and bordering on fraudulent conduct - Liability for losses directly caused by injunctions - Whether sum awarded as damages warranted in special circumstances of case - Whether quantification of damages in accordance with established principles*

***CIVIL PROCEDURE:*** *Injunctions - Setting aside - Damages - Assessment of - Undertaking to pay damages in relation to four interim injunctions that were subsequently set aside - Injunctions obtained by deceit and bordering on fraudulent conduct - Liability for losses directly caused by injunctions - Whether sum awarded as damages warranted in special circumstances of case - Whether quantification of damages in accordance with established principles*

***DAMAGES:*** *Assessment - Appeal against - Undertaking to pay damages in relation to four interim injunctions that were subsequently set aside - Injunctions obtained by deceit and bordering on fraudulent conduct - Liability for losses directly caused by injunctions - Whether sum awarded as damages warranted in special circumstances of case - Whether quantification of damages in accordance with established principles*

This was an appeal concerning an assessment of damages based on the appellant's undertakings to pay damages in relation to four interim injunctions that had been granted by the High Court in his favour. Briefly, the facts were that the appellant had filed four derivative actions, which were all consolidated, on behalf of TK Mining Sdn Bhd and its shareholders against the respondents. On

A 10 January 2002, interim injunctions were granted on *ex parte* applications by the appellant. However, on 24 January 2002, the said injunctions were subsequently set aside on *ex parte* applications made by the respondents. The Judicial Commissioner, in setting aside the injunctions, also ordered that an immediate
B enquiry into damages arose from the undertaking to pay damages to be assessed by the Deputy Registrar. By the Registrar's Certificate, damages totalling RM17,887,038.70 was awarded to the respondents. The appellant's appeal to the High Court against the said assessment was dismissed. However, the High Court
C awarded a lesser figure of RM17,847,041.60 after noting that there was an error in calculating the total sum ordered. The appellant appealed further. The principal questions raised herein were, *inter alia:* (i) whether the concurrent findings of the Deputy Registrar and the High Court Judge were supported by the
D evidence and whether there was sufficient appreciation of the evidence; (ii) whether the correct principles on the calculation of damages were applied by both in awarding the damages on the undertaking; and (iii) whether the conduct of the appellant warranted the award of the damages in the circumstances.

E

**Held (dismissing appeal)**
**Per Mohamad Ariff Yusof J delivering the judgment of the court:**

F **(1)** The subject matter of the appeal concerned damages and its quantum. Therefore the principle that the court will be disinclined to reverse the finding of the trial judge as to the amount of damages should apply. The court, in assessing the quantum of damages to be awarded, exercises a discretionary
G jurisdiction, for the quantification of damages could not proceed on the basis of mathematical certainty. These general principles should apply in regard to an assessment of damages based on an undertaking to pay damages in an injunction matter. (paras 9 & 15)

H **(2)** On the facts of this appeal, there were concurrent findings of the Deputy Registrar and the High Court Judge. The High Court Judge had meticulously sifted through the evidence in a detailed judgment, and based his confirmation of the award of damages on sound principles of law. Because of the
I interlocutory injunctions, the business of the companies in the

entire group came to a standstill since the banks were no longer willing to provide facilities to the main companies in the group. The learned judge's assessment of the evidence provided by an independent witness from a bank could not be faulted. Thus, the appellant had failed to demonstrate that there had been any serious error of principle on the part of the High Court judge when he heard the appeal from the assessment of damages by the Deputy Registrar. (paras 13, 14 & 24)

**(3)** The facts showed that when the four injunctions were applied *ex parte*, one of the injunctions was premised on a discontinued suit. Thus, the *ex parte* injunctions were obtained by deceit, bordering on fraudulent conduct and were circulated to the banks. The appellant thus must be held liable on his undertaking to pay damages; the court should hold him responsible for losses directly caused by the injunctions. (paras 27 & 31)

**(4)** The sum of some RM17 million awarded as damages on the undertaking to pay damages was warranted in the special circumstances of this case, where the appellant had clearly and maliciously set out to cause maximum damage to the companies in the group. The causal link between the undertaking to pay damages and the damages of RM17,847,041.60 awarded by the Deputy Registrar and affirmed by the High Court was established in a factual matrix where the appellant had obtained the four interlocutory injunctions *ex parte* with deceit. Thus, there was no error in law or any failure of appreciation of the evidence on the part of the trial judge or the deputy registrar. The quantification of the damages was in accordance with established principles. (para 35)

**Per Abdul Malik Ishak JCA (concurring)**

**(1)** Damages for deceit were not limited to those categories which were reasonably foreseeable. Damages recoverable can include consequential loss suffered by reason of wide circulation to the banks (*Doyle v. Olby (Ironmongers) Ltd & Ors*). In this case, the appellant had obtained injunction orders which effectively destroyed the companies belonging to the respondents. The

injunction orders were couched in extremely wide terms and circulated to the banks thereby cutting off the credit lines and banking facilities enjoyed by the companies. (paras 44 & 54)

**(2)** In assessing the damages payable by the appellant when there was deceit and non-disclosure of material facts bordering on fraudulent conduct, the following principles apply, *inter alia* (a) the appellant must make reparation of all the damages directly flowing from it; (b) although the damages need not have been foreseeable, yet it must have been directly caused by the appellant; (c) in assessing the damages, the respondent was entitled to recover the full purchase price paid by the first respondent for purchasing the companies from the appellant and (d) the respondents were also entitled to recover consequential loss caused by the appellant and incurred by the respondent. Sufficient evidence was led to demonstrate the damages incurred by all the respondents. The appellant should be held responsible for all losses directly caused by the *ex parte* injunctions regardless of its foreseeability. (paras 56 & 57)

***Bahasa Malaysia*** *Translation Of Headnotes*

Ini adalah rayuan bagi taksiran ganti rugi berdasarkan akujanji untuk membayar ganti rugi berhubung empat injunksi sementara memihak kepada perayu yang telah diberi oleh Mahkamah Tinggi. Secara ringkasnya, fakta adalah bahawa perayu telah memfailkan empat tindakan derivatif, yang kesemuanya telah digabungkan, bagi pihak TK Mining Sdn Bhd dan pemegang-pemegang sahamnya, terhadap responden-responden. Pada 10 Januari 2002, injunksi sementara telah diberikan atas permohonan *ex parte* perayu. Walau bagaimanapun, pada 24 Januari 2002, injunksi-injunksi tersebut telah diketepikan atas permohonan *ex parte* responden-responden. Pesuruhjaya Kehakiman, dalam mengetepikan injunksi-injunksi tersebut, juga telah memerintahkan siasatan dibuat ke atas ganti rugi yang berbangkit daripada akujanji untuk membayar ganti rugi untuk ditaksirkan oleh Timbalan Pendaftar. Melalui Sijil Pendaftar, ganti rugi RM17,887,038.70 telah diawardkan kepada responden-responden. Rayuan plaintif kepada Mahkamah Tinggi terhadap taksiran tersebut telah ditolak. Walau bagaimanapun, Mahkamah Tinggi telah mengawardkan amaun yang kurang sedikit iaitu RM17,847,041.60 selepas mendapati bahawa terdapat kesalahan dalam pengiraan jumlah wang yang diperintahkan. Perayu merayu

selanjutnya. Soalan-soalan utama yang dibangkitkan adalah, antara lain: (i) sama ada penemuan serentak Timbalan Pendaftar dan Hakim Mahkamah Tinggi disokong oleh keterangan kukuh dan sama ada pertimbangan yang wajar telah diberikan kepada keterangan tersebut; (ii) sama ada prinsip-prinsip yang betul berkenaan pengiraan ganti rugi telah digunapakai oleh kedua-dua pihak dalam mengawardkan ganti rugi atas akujanji; dan (iii) sama ada kelakuan perayu mewajarkan award ganti rugi dalam keadaan-keadaan sedia ada.

**Diputuskan (menolak rayuan)**
**Oleh Mohamad Ariff Yusof HMT menyampaikan penghakiman mahkamah:**

**(1)** Hal perkara rayuan ini adalah berkenaan ganti rugi dan kuantum. Oleh itu prinsip bahawa mahkamah enggan mengakas dapatan hakim bicara berhubung amaun ganti rugi harus digunapakai. Mahkamah dalam mentaksirkan kuantum ganti rugi yang harus diawardkan menjalankan bidang kuasa budi bicara, kerana kuantifikasi ganti rugi tidak boleh dibuat atas asas kepastian matematik. Prinsip-prinsip umum ini harus digunapakai dalam hal taksiran ganti rugi berdasarkan akujanji membayar ganti rugi dalam perkara injunksi.

**(2)** Atas fakta-fakta rayuan ini, terdapat dapatan serentak Timbalan Pendaftar dan Hakim Mahkamah Tinggi. Hakim Mahkamah Tinggi telah mempertimbangkan dengan teliti keterangan dalam penghakiman yang terperinci, dan mengasaskan pengesahan award ganti rugi atas prinsip undang-undang yang betul. Kerana injunksi-injunksi interlokutori, perniagaan syarikat-syarikat dalam kumpulan tersebut terpaksa diberhentikan kerana bank-bank tidak lagi menyediakan kemudahan kepada syarikat-syarikat utama dalam kumpulan tersebut. Taksiran yang arif hakim tidak boleh dipersalahkan. Oleh itu, perayu telah gagal menunjukkan bahawa terdapat kesilapan prinsip yang serius dari pihak Hakim Mahkamah Tinggi apabila beliau mendengar rayuan daripada taksiran ganti rugi Timbalan Pendaftar.

**(3)** Fakta-fakta menunjukkan bahawa apabila keempat-empat injunksi telah dipohon secara *ex parte*, salah satu daripada injunksi adalah berlandaskan guaman yang telah dihentikan. Oleh itu, injunksi-injunksi *ex parte* diperolehi melalui penipuan,

menghampiri kelakuan frod dan telah diedarkan kepada bank-bank. Oleh itu perayu harus bertanggungjawab ke atas akujanji untuk membayar ganti rugi; mahkamah harus memutuskan bahawa perayu bertanggungan bagi segala kerugian yang telah secara terus disebabkan oleh injunksi-injunksi itu.

**(4)** Amaun RM17 juta yang diawardkan sebagai ganti rugi untuk akujanji membayar ganti rugi adalah wajar mengikut hal keadaan khas kes ini, di mana perayu telah dengan jelas dan berniat jahat menyebabkan kerosakan maksimum kepada syarikat-syarikat dalam kumpulan tersebut. Pertalian sebab-sebab antara akujanji membayar ganti rugi dan ganti rugi RM17,847,041.60 yang awardkan oleh Timbalan Pendaftar serta disahkan oleh Mahkamah Tinggi telah dibuktikan dalam matriks fakta di mana perayu telah memperolehi empat injunksi interlokutori *ex parte* secara penipuan. Oleh itu, tiada kesalahan undang-undang atau apa-apa kegagalan pertimbangan oleh hakim bicara atau Timbalan Pendaftar. Kuantifikasi kesemua ganti rugi adalah menurut prinsip-prinsip yang mantap.

**Oleh Abdul Malik Ishak HMR (menyetujui):**

**(1)** Ganti rugi bagi penipuan tidak dihadkan kepada kategori-kategori yang boleh dijangkakan secara munasabah. Ganti rugi boleh diperolehi termasuk kerugian yang dialami oleh sebab pengedaran luas kepada bank-bank (*Doyle v. Olby (Ironmongers) Ltd & Ors*). Di dalam kes ini, perayu telah memperolehi perintah injunksi yang telah, dengan berkesan, menghancurkan syarikat-syarikat milik responden-responden. Perintah-perintah injunksi telah diperihalkan dalam istilah yang amat luas dan telah diedarkan kepada bank-bank, sekaligus telah memotong pertalian kredit dan kemudahan bank yang telah dinikmati oleh syarikat-syarikat itu.

**(2)** Dalam mentaksirkan ganti rugi yang perlu dibayar oleh perayu di mana terdapat penipuan dan ketidakdedahan fakta-fakta penting menghampiri kelakuan frod, prinsip-prinsip berikut digunapakai, antara lain (a) perayu harus memberi pampasan bagi segala ganti rugi akibat kelakuan tersebut; (b) walaupun ganti rugi tidak perlu dijangkakan, ia mesti telah secara langsung disebabkan oleh perayu; (c) dalam taksiran ganti rugi, responden berhak mendapatkan balik harga belian yang telah yang telah dibayar penuh oleh responden pertama atas

pembelian syarikat-syarikat daripada perayu; dan (d) responden-responden juga berhak untuk mendapatkan kerugian yang disebabkan oleh perayu dan ditanggung oleh responden-responden. Keterangan memadai diberi untuk menunjukkan ganti rugi yang ditanggung oleh responden-responden. Perayu harus bertanggungjawab bagi kesemua kerugian yang secara langsung disebabkan oleh injunksi-injunksi *ex parte* tanpa mengira kebolehjangkaannya.

**Case(s) referred to:**

*Air Express Ltd v. Ansett Transport Industries (Operations) Pty Ltd [1979] 33 ALR 578* ***(refd)***

*Albacruz (Cargo Owners) v. Albazero (Owners) [1977] AC 774* ***(refd)***

*Alfred McAlpine Construction Ltd v. Panatown Ltd [2001] 1 AC 518* ***(refd)***

*American Cyanamid Co v. Ethicon Ltd [1975] 1 All ER 504* ***(refd)***

*Banco de Portugal v. Waterlow And Sons, Limited; Waterlow And Sons, Limited v. Banco de Portugal [1932] AC 452* ***(refd)***

*Bonham-Carter v. Hyde Park Hotel, Limited [1948] 64 TLR 177* ***(refd)***

*British Transport Commission v. Gourley [1956] AC 185* ***(refd)***

*Cheltenham & Gloucester BS v. Ricketts [1993] 4 All ER 276* ***(refd)***

*Commodity Ocean Transport Corporation v. Basford Unicorn Industries Ltd (The "Mito") [1987] 2 Lloyd's Rep 197* ***(refd)***

*Digital Corp v. Darkcrest Ltd [1984] 1 Ch 512* ***(refd)***

*Doyle v. Olby (Ironmongers) Ltd And Others [1969] 2 QB 158* ***(refd)***

*Doyle v. Olby Ltd [1969] 2 QB 159* ***(refd)***

*General Tire & Rubber Co v. Firestone Tyre & Rubber Co Ltd [1975] 1 WLR 819* ***(refd)***

*Johnson Control Systems Ltd v Techni Track Europa Ltd [2003] EWCA Civ 1126* ***(refd)***

*Koufos v. C Czarnikow Ltd [1969] 1 AC 350* ***(refd)***

*Livingstone v. The Rawyards Coal Company [1880] 5 App Cas 25* ***(refd)***

*Milik Perusahaan Sdn Bhd & Anor v. Kembang Masyur Sdn Bhd [2003] 1 CLJ 12 CA* ***(refd)***

*Monarch Steamship Co, Limited v. Karlshamns Oljefabriker (a/b) [1949] AC 196* ***(refd)***

*Newacres Sdn Bhd v. Sri Alam Sdn Bhd [2000] 2 CLJ 833 FC* ***(refd)***

*Newby v. Harrison [1861] 3 De GF* ***(refd)***

*Smith v. Day [1882] 21 Ch D 421* ***(refd)***

*Sunseekers Pte Ltd v. Jsh Joshua [1990] 1 CLJ 1048; [1990] 3 CLJ (Rep) 979 HC* ***(refd)***

*Swingcastle Ltd v. Alastair Gibson (A Firm) [1991] 2 AC 223* ***(refd)***

*Tanjung Tiara Sdn Bhd v. Paragro Sdn Bhd [2010] 9 CLJ 400 CA* ***(refd)***

*Topaiwah v. Salleh [1968] 1 LNS 161 FC* ***(refd)***

*Ushers Brewery Ltd v. PS King & Co (Finance) Ltd [1972] Ch 148* ***(refd)***

*Victoria Laundry (Windsor) Ltd v. Newman Industries Ltd; Coulson & Co Ltd (Third Parties) [1949] 2 KB 528 CA* ***(refd)***

*Voo Nyuk Fah & Anor v. Lam Yat Kheong & Anor [2012] 5 CLJ 229 CA* ***(refd)***

**Legislation referred to:**
Rules of the High Court 1980, O. 56

**Other source(s) referred to:**
*Halsbury's Laws of England*, 4th edn, vol 24, para 1072

*For the appellant - Wong Kian Kheong (Khoo Kay Ping & Karin Lim with him); M/s Zaid Ibrahim & Co*
*For the respondents - Cyrus V Dass (David Dinesh Mathew with him); M/s Shook Lin & Bok*
*Jacob Goldie; M/s Jacob Goldie SS Chew*

*[Editor's note: For the High Court judgment, please see Goo Sing Kar v. Dato' Lim Ah Chap & Ors And Other Applications [2002] 2 CLJ 250.]*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

**Mohamad Ariff Yusof J:**

### Procedural Background

**[1]** In this appeal, four different suits were consolidated, namely Civil Suits No. 22-52-2001, 22-94-2001, 22-95-2001 and 22-96-2001. The plaintiff, now the appellant, purportedly brought these four derivative actions on behalf of TK Mining Sdn Bhd and its shareholder. In Suit No. 22-52-2001, TK Mining Sdn Bhd appeared as a nominal 3rd defendant. The 1st defendant in all the suits was one Datuk Lim Ah Chap who, at the material times, owned 50% of the shareholding of TK Mining Sdn Bhd with the appellant/plaintiff owning the other 50%. In respect of suit number 22-52-2001, the other defendants were Minat Deras Sdn Bhd, Hormat Abadi Sdn Bhd, Impianox Sdn Bhd, and three other persons (Ahmad Al Kamar bin Mohd Baria, Abdul Halim bin Jalil and Irdawati binti Muhammad Ishak). These three other persons were sued as essentially nominees of Datuk Lim Ah Chap. In respect of the other suits, the defendants, aside from Datuk Lim, were;

(a) 22-94-2001

TK Sawmill Trading Sdn Bhd (as 2nd defendant)

(b) 22-95-2001

Seng Chap Wah Timber Merchant Sdn Bhd (as 2nd defendant)

(c) 22-96-2001

Metro Istimewa Sdn Bhd (as 2nd defendant)

**[2]** These three other civil suits, like Civil Suit No. 22-52-2001, were all instituted as derivative actions for and on behalf of TK Mining Sdn Bhd.

**Subject Matter: Assessment And Award Of Damages On Plaintiff's Undertaking To Pay Damages In Relation To Interim Injunctions**

**[3]** This appeal concerned an assessment of damages based on the plaintiff's undertakings to pay damages in relation to four interim injunctions that had been granted by the High Court in his favour in each of the separate suits mentioned earlier. These interim injunctions were granted on 10 January 2002 on *ex parte* applications by the plaintiff. All were set aside on 24 January 2002 on *ex parte* applications being made by the respective defendants. The learned Judicial Commissioner (now Ramly Ali, JCA), in setting aside the injunctions, also ordered that an immediate enquiry into damages arising from the undertaking to pay damages to be assessed by the deputy registrar. The decision of the learned Judicial Commissioner is reported in [2002] 2 CLJ 250. The deputy registrar conducted the enquiry which involved 17 witnesses and some 185 pages of notes of evidence. By the Registrar's Certificate, damages totalling RM17,887,038.70 was awarded to all the respondents.

**[4]** The plaintiff then appealed to the High Court Judge under O. 56 of the Rules of the High Court 1980. The High Court Judge dismissed the appeal, but reduced the amount of damages marginally to RM17,847,041.60 to correct a mathematical error.

**[5]** The full particulars of the damages ordered to be paid are as follows:

(a) Damages for inconvenience and embarrassment awarded to each of the respondents in the sum of RM20,000 each, totalling RM220,000.

(b) RM15 million as damages to Datuk Lim Ah Chap (the 1st respondent) for losses suffered by TK Mining Sdn Bhd, TK Sawmill Sdn Bhd, Minat Deras Sdn Bhd, Hormat Abadi Sdn Bhd, and Impianox Sdn Bhd. (All these companies comprised companies within the group of companies initially owned by Dato' Lim Ah Chap and the appellant.)

(c) Damages for loss of banking facilities to TK Mining Sdn Bhd in the sum of RM600,000.

(d) Damages for loss of banking facilities to TK Sawmill Sdn Bhd in the sum of RM340,000.

(e) Damages for the loss of banking facilities to Metro Istimewa Sdn Bhd in the sum of RM20,000.

(f) Damages for loss of profits for the development project of Metro Istimewa Sdn Bhd in the sum of RM1,667,041.60.

**[6]** As earlier noted the total sum awarded, as confirmed by the learned High Court Judge, was RM17,847,041.60. The learned deputy registrar had earlier ordered RM17,887,038.70. The High Court Judge awarded the lesser figure after noting there was a mathematical error in calculating the total sum ordered.

**[7]** This present appeal by the plaintiff/appellant before the Court of Appeal was against the dismissal of the plaintiff's appeal by the learned High Court Judge.

## This Court's Decision

**[8]** We dismissed the appeal on 24 May 2012 by a unanimous decision and ordered that the sum of RM50,000 fixed costs for this appeal, the costs of the appeal in the High Court Kuantan and the costs for the assessment of damages by the registrar of the High Court, be paid by the appellant to the respondents. The deposit of RM500 was ordered to be paid to the respondents. I now provide the grounds for this unanimous decision.

## Appeal From Concurrent Findings On Damages

**[9]** Two preliminary matters require to be stated at the outset. First, the subject matter of the appeal concerned damages and its quantum, and therefore the principle that the court will be disinclined to reverse the finding of the trial judge as to the

amount of damages should apply. The findings of the trial judge should not be reversed merely because the appellate court might be of the opinion that if they had tried the case at first instance they would have given a lesser sum. Counsel for the respondents, Dato' Cyrus V. Dass, cited the oft-quoted statements of the Federal Court in *Topaiwah v. Salleh* [1968] 1 LNS 161, reading:

> In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the Judge acted on some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it an entirely erroneous estimate of the damages to which the Plaintiff is entitled.

**[10]** More recently, the Court of Appeal has reaffirmed these principles in *Voo Nyuk Fah & Anor v. Lam Yat Kheong & Anor* [2012] 5 CLJ 229, where Mohamad Apandi Ali JCA stated:

> As the appellate court, we are mindful that since the assessment of damages is an exercise of judicial discretion, such assessment is seldom disturbed unless there is clear error on the principles of law or that the amount is erroneous and without any basis and justification. On this approach, we are reminded of what Greer LJ said in *Flint v. Lovell* [1935] 1 KB 345, which reads as follows:
>
> > … the court will be disinclined to reverse the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial Judge on the question of the amount of damages, it will generally be necessary that this court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damage to which the Plaintiff is entitled. (at pp. 236 – 237 of the Report)

**[11]** See also an earlier Court of Appeal decision in *Tanjung Tiara Sdn Bhd v. Paragro Sdn Bhd* [2010] 9 CLJ 400, where the Court of Appeal expressed its reluctance to interfere with findings of facts by the learned High Court Judge in relation to assessment of damages:

> The award of damages by the learned trial Judge is primarily based on his finding of facts in the light of the evidence adduced at the trial. In the light of two conflicting versions, he has

A accepted the evidence adduced for the Plaintiff company and rejected the Defendant's evidence. As a trier of facts, the learned Judge is entitled to do so. There is no reason for us to disturb his findings of facts …

B In *Amar Singh v. Chin Kiew* [1960] 1 LNS 5, Thomson CJ stated succinctly as follows:

The fixation of damage is so largely a matter of opinion or of impression that differences of calculation or assessment are to be expected. It is, to some extent, an exercise of judicial discretion …

C (at pp. 409 - 410 of the Report)

**[12]** Thus, for the appellant to succeed he must show either (a) the trial judge has acted on some wrong principle of law, or (b) the trial judge has made an entirely erroneous estimate of the D damages in the sense that it is so extremely high or so very small.

**[13]** The second preliminary matter concerned concurrent findings. On the facts of this appeal, there were concurrent findings of the deputy registrar and the High Court Judge, and E again I took note of the general principle, established by the Court of Appeal, that save in the most exceptional circumstances, the Court of Appeal will not upset concurrent findings. In *Milik Perusahaan Sdn Bhd & Anor v. Kembang Masyur Sdn Bhd* [2003] 1 CLJ 12, for instance, this court has held as follows:

F … it is a general principle upon which this Court acts that save in most exceptional circumstances, concurrent findings of fact will not be gone into by us. But that is not to say that an appeal of this nature will never succeed. If the Appellant can sufficiently demonstrate to a conviction that a serious error of principle has G occurred in both the lower tiers of the High Court, this court will have no hesitation; and indeed we are duty-bound to correct the resultant error. (at p. 12 of the Report)

**[14]** On the facts of this present appeal, we found that the H appellant had failed to demonstrate to that degree of conviction required by this general principle that there had been any serious error of principle on the part of the High Court Judge when he heard the appeal from the assessment of damages by the deputy registrar.

I **[15]** It is further a well-established principle that a court in assessing the quantum of damages to be awarded exercises a discretionary jurisdiction, for the quantification of damages cannot

proceed on the basis of mathematical certainty. These general principles, with respect, should apply in regard to an assessment of damages based on an undertaking to pay damages in an injunction matter. That said, the assessment and award of damages on the undertaking to pay damages are governed by specific additional principles addressed below.

## Specific Principles Applicable In Relation To An Undertaking To Pay Damages

**[16]** We took note of the observation made by counsel for the appellant that the principles to be applied by the courts in relation to assessment of damages on an undertaking to pay damages had not been fully canvassed in our jurisdiction. Counsel argued that we should therefore seize the opportunity in this case to carefully define the applicable principles in the special context of this case where damages awarded was in the sum of over RM17 million for an interim injunction which operated for a mere 14 days until it was set aside. In particular, it was strongly argued before us that the court should only award damages which are caused by the injunction and its continuation as distinguished from damages which arise from the existence and course of the litigation. Counsel relied very heavily on the decision of the High Court of Australia in *Air Express Ltd v. Ansett Transport Industries (Operations) Pty Ltd* [1979] 33 ALR 578, in particular the passage in the judgment by Gibbs J reading:

> In a number of authorities the court has distinguished between loss which was caused by the injunction and loss which arose from the litigation … There is no reason to doubt that it is correct in principle to draw such a distinction if the facts warrant it. If the pendency of the litigation, rather than the making of the order, was the cause of the Plaintiff's loss, the terms of the undertaking have no application, since the Plaintiff has not sustained loss by reason of the order. Moreover, except in certain cases analogous to malicious prosecution, the Defendant is not entitled to recover damages for loss resulting from legal proceedings brought against him – the only liability of the unsuccessful Plaintiff is to pay costs. The court should no doubt scrutinise with care an assertion by the Plaintiff that loss which has been suffered by the Defendant has resulted from the litigation rather than from the making of the interlocutory order, since the Plaintiff should not be allowed to evade payment of the price which he has agreed to pay for the grant of the injunction.

A In the end, however, the question becomes one of fact: did the making of the order cause the loss? The onus of proof must, in accordance with general principles, lie on the Defendant who asserts that he sustained damage by reason of the order. (At pp. 581 to 582 of the report)

B **[17]** *Air Express Ltd* was referred to and applied in *Sunseekers Pte Ltd v. Jsh Joshua* [1990] 1 CLJ 1048; [1990] 3 CLJ (Rep) 979 by the High Court (Singapore), when it was also suitably noted: "... there must be a causal link between the injunction and the damage suffered ... The onus of proof is on the defendant: See C *Air Express v. Ansett Transport Industries (Operations) Pty Ltd.*" (per Chan Sek Keong J at p. 351 of the report)

**[18]** There was no real dispute between the parties as to the correctness of the principles in the *Air Express Ltd*'s case, *supra*. I D gave due consideration to this very persuasive case of the Australian High Court, and in the same vein also considered the other principles bearing on the issue, namely:

(a) an undertaking as to damages is "the price which the person E asking for an interlocutory injunction has to pay for it". (*Halsbury's Laws of England* (4th edn.), vol. 24, para. 1072);

(b) the undertaking to pay damages is one given by the plaintiff to the court and the provider of the undertaking puts himself under the power of the court; F

(c) the purpose of the undertaking is that, in the event of the interlocutory injunction being discharged, the applicant will have to compensate the opposing party for loss or damages which the court is of the opinion, was caused as a result of G the injunction;

(d) the undertaking, though described as an undertaking as to damages, "does not found any cause of action, but enables a party enjoined to apply to court for compensation if it is H subsequently established that the interlocutory injunction should not have been granted" (*Cheltenham & Gloucester BS v. Ricketts* [1993] 4 All ER 276);

(e) the undertaking is an absolute undertaking that the applicant will be liable for any damages which the opposite party may I have sustained; and

(f) if the interlocutory injunction has been obtained fraudulently or maliciously, the court will not confine itself to proximate damages, but can order exemplary damages (*Digital Corp v. Darkcrest Ltd* [1984] 1 Ch 512, *Smith v. Day* [1882] 21 Ch D 421).

**[19]** These specific principles in relation to the issue of damages on an undertaking as to damages were duly considered. Ultimately, this dispute concerns an issue of causation and that depends on the evidence before the learned deputy registrar and High Court Judge hearing the appeal from the deputy registrar's decision on the assessment of damages.

## Our Findings

**[20]** We were satisfied that the learned High Court Judge had properly considered the evidence and the record did not disclose any error of law, perverse findings of fact or generally any findings which went against the weight of evidence. In our unanimous view, there was ample evidence to support the deputy registrar's decision on the quantum of damages awarded, and likewise the concurrent findings of the learned High Court Judge.

**[21]** The issue ultimately being of causation, we were not persuaded that the some what limited duration of the interlocutory injunctions granted, ie, 14 days, could not support the quantum of damages awarded. We were of the view that the duration *per se* could not be regarded as the determining factor. By way of illustration, in *Johnson Control Systems Ltd v. Techni Track Europa Ltd* [2003] EWCA Civ 1126, for example, although the *Mareva* injunction lasted only approximately one week when set aside, sufficient damage had been done to the company which resulted in the court awarding a high quantum of damages on the undertaking to pay damages. The English Court of Appeal (Civil Division) in awarding the high quantum of damages observed:

> Although the Mareva had been set aside on 23rd of February, the relief came too late to save Europa from going into administrative receivership. (Per Lord Justice Mantell, at para. 4 of the judgment)

**[22]** In our view, the principal questions raised in this appeal concerned first, the issue of causation; secondly, whether the concurrent findings of the deputy registrar and the learned High Court Judge was supported by the evidence and whether there

was sufficient appreciation of the evidence; thirdly, whether the correct principles on the calculation of damages were applied by both in awarding the damages on the undertaking; and fourthly, whether the conduct of the plaintiff/appellant warranted the award of the damages in the circumstances.

**[23]** We were unanimously of the opinion that the learned High Court Judge exercised his judicial discretion properly in respect of all the four principal questions noted above. We could not agree with the submissions of counsel for the appellant who tried to persuade this court that the findings of the judge were perverse on the evidence or that there were allegedly serious errors of law. To quote learned counsel for the appellant, Mr Wong Kian Kheong, we should allow the appellant's appeal for the following reasons in summary:

(a) There was no evidence the losses were actually caused by the four *ex parte* injunctions.

(b) The calculation of damages by the deputy registrar and the learned High Court Judge was unsubstantiated.

(c) The learned High Court Judge failed to consider adequately the evidence in this case.

**[24]** Contrary to learned counsel's contentions, the record disclosed that the learned High Court Judge meticulously sifted through the evidence in a detailed judgment, and based his confirmation of the award of damages on sound principles of law. The largest component of damages related to the damages of RM15 million to Dato' Lim Ah Chap for the losses caused to the companies in the group of companies mentioned earlier. Because of the interlocutory injunctions, the business of the companies in the entire group came to a standstill since the banks were no longer willing to provide facilities to the main companies in the group, namely TK Mining Sdn Bhd, TK Sawmill Sdn Bhd and Metro Istimewa Sdn Bhd. The total facilities totalled about RM10 million. We did not accept the appellant's reading of the evidence that it seemed the banking facilities were withdrawn even before the four interlocutory injunctions were granted since the companies were already in default. We felt the evidence was clear that HSBC Bank was willing to review the banking facilities but for the interlocutory injunctions. The learned judge's assessment of the

evidence provided by the independent witness from HSBC Bank could not be faulted. Aside from the independent evidence of a senior officer of the bank (Mdm Sivamany; SD5), there were letters from M/s Skrine, who were solicitors for HSBC Bank, which reinforced the position that the bank was prepared to consider a review of the facilities. In the letter dated 2 November 2001, the solicitors had stated:

> Our clients (HSBC) state that they will be prepared to consider or review of the above if acceptable tangible security is provided and all disputes between *Dato' Lim Ah Chap v. Mr Goo Sing Kar* are finally and completely resolved before 17.12.2001.

**[25]** The total value of the group of companies was in excess of RM40 million – a fact admitted by the appellant himself. See Appeal Record, Vol. 2, at p. 423.

**[26]** On this basis, the appellant had sold off his interest in the group of companies for RM13 million to Dato' Lim Ah Chap, and entered into a settlement agreement which purported to settle the dispute between the parties in Civil Suit No. 22-52-2001, in which there had been an earlier Anton Piller Injunction granted to the appellant. Indeed that suit was discontinued with a notice of discontinuance filed by both counsel for the parties.

## Special Feature Of Case: Deceit And Non-disclosure Of Material Facts

**[27]** An important feature on the facts of this appeal was the fact that when the subsequent four injunctions were applied *ex parte*, one of the injunctions was premised on the discontinued suit! Counsel for the respondents, Dato' Cyrus V Dass, had impressed upon this court that this was a "special feature" of this case. The *ex parte* injunctions were obtained by deceit, bordering on fraudulent conduct and were circulated to the banks. We were in agreement with Dato' Cyrus V Dass' submission on this. When the applications were made *ex parte* before Ramly Ali JC (now JCA), the appellant had suppressed the critical fact that there was a settlement agreement and that Suit No. 22-52-2001 had been discontinued. This material non-disclosure led to the discharge and setting aside of the injunctions upon the *ex parte* application of the judge.

**[28]** Ramly Ali JC had the following to say in the reported decision in respect of the suppression of material facts:

> Another very material fact that was not disclosed was about the Settlement Agreement between the Plaintiff and Dato' Lim Ah Chap (the 1st Defendant in all the four cases). Apparently there was dispute between the Plaintiff and Dato' Lim Ah Chap. This dispute led to the filing of suit No. 22-52-2001 by the Plaintiff against Dato' Lim Ah Chap and the other Defendants. This Settlement Agreement according to the Defendants' counsel is a global one ie, for settlement of all the disputes between them. In that Settlement Agreement, the Plaintiff agreed to give up all his rights and liabilities in all the Defendants' companies for a liquidated sum of RM13 million to be paid by Dato' Lim Ah Chap. Apparently, the Plaintiff was in breach of that Settlement Agreement and as such the Defendants filed a Civil Suit No. 22-93-2001 against the Plaintiff, on 10th November 2001. Immediately after that, the Plaintiff then filed three other suits against the Defendants *vide* Civil Suits No. 22-94-2001, 22-95-2001 and 22-96-2001 and applied for *ex parte* injunction (the subject matter of the present proceedings). *All these facts are material to the present proceedings and were not disclosed by the Plaintiff when he applied for the ex parte injunction. In respect of Suit No. 22-52-2001, it was also agreed in the Settlement Agreement that as a package settlement, the said suit would be discontinued. A notice of discontinuance was signed and filed by both counsels for the parties. Again, this fact was also not disclosed by the Plaintiff.* In respect of all the four cases, the Plaintiff complained about mismanagement of the main company ie, TK Mining Sdn Bhd. In fact in suit No. 22-52-2001 the Plaintiff had applied for an appointment of a receiver and manager, which was duly granted by the court. The Plaintiff had not disclosed to the court when he applied for the *ex parte* injunction that the receiver and manager, after having obtained all information from the relevant parties had concluded that the account of the said TK Mining Sdn Bhd. were in order. Again this fact was not disclosed. *The Plaintiff did not come with clean hands. He had failed to make full and frank disclosure. If the court had known all these relevant facts before making the ex parte injunction on 10th January 2002, the court may not grant the order, especially some of the Defendants are multi-million business concerns ...* (emphasis added) (At pp. 257-258)

**[29]** We noted that this particular suit was subsequently struck out on 12 June 2002.

**[30]** This background fact was also adverted to by Dato' Halim Aman J who noted at p. 20 of the appeal record, part A, that the applications were partly based on Civil Suit No. 22-52-2001

which had been discontinued. At p. 45, Dato' Halim Aman J made express reference to damages to be awarded where "perintah injunksi yang mana telah diperolehi dengan cara yang tidak telus." A

**[31]** It was evident that the four injunctions applied *ex parte* were intended to cause damage to the companies in the group in which the appellant had disposed off his interest to the 1st defendant. He knew perfectly well the companies would not have been able to survive without the banking facilities. Since this was the scenario, the appellant must be held liable on his undertaking to pay damages. The appellant had obtained the injunctions fraudulently or maliciously; the court should hold him responsible for all loss directly caused by the injunction. See *Doyle v. Olby Ltd* [1969] 2 QB 159: "The defendant is bound to make reparation for all the actual damages suffered, so far, again as money can do it … The defendant is bound to make reparation for all the actual damages directly flowing from the fraudulent inducement … All such damages can be recovered, and it does not lie in the mouth of the fraudulent person to say that they could not be reasonably foreseen … (at p. 167) B C D

**[32]** Damages awarded of RM17,847,041.60 appeared superficially to be excessive for the short duration of 14 days, but where maximum damage resulted with the intent that it should result, the appellant must in law be liable on the undertaking for this large sum. It was admitted by him that the group of companies had the value of some RM40 million. The figure of RM15 million awarded in respect of the head of losses suffered by TK Mining Sdn Bhd, TK Sawmill Sdn Bhd, Minat Deras Sdn Bhd, Hormat Abadi Sdn Bhd, and Impianox Sdn Bhd can be justified on sound principles. The figure of RM15 million was arrived at after adjusting for bank loan debts of RM10 million which remained payable and for other contingencies which, together with the bank debts, amounted to RM15 million, and for the value of landed assets still retained by Metro Istimewa Sdn Bhd of RM13,283,275. E F G

**[33]** The other heads of damages were likewise supportable on sound principles for quantification of damages. The loss of banking facilities attributable to the separate companies was calculated on the basis of interest at the rate of 8% per annum on the actual loan amounts, as was the calculation for loss of possible profits for H I

Metro Istimewa Sdn Bhd. We agreed that this was an acceptable method of calculation for loss of use of monies. See the Federal Court in *Newacres Sdn Bhd v. Sri Alam Sdn Bhd* [2000] 2 CLJ 833.

**[34]** It was also submitted by counsel for the appellant that no damages could be awarded for inconvenience and embarrassment since companies cannot be injured in feelings. The learned judge rightly categorised this argument as without legal support. The short response to this particular submission is that the law now recognises corporate entities can sue and recover for inconvenience, embarrassment and damage to reputation which will be reflected in its goodwill. This aspect of the law was correctly recognised by the learned trial judge.

## Conclusion

**[35]** In summary, we were unanimous in finding that the sum of some RM17 million awarded as damages on the undertaking to pay damages was warranted in the special circumstances of this case, where the appellant had clearly and maliciously set out to cause maximum damage to the companies in the group. The causal link between the undertaking to pay damages and the damages of RM17,847,041.60 awarded by the deputy registrar and affirmed by the learned High Court Judge was established in a factual matrix where the appellant had obtained the four interlocutory injunctions *ex parte* with deceit; in one glaring instance he had obtained one of the interlocutory injunctions on the basis of an action which had in fact been discontinued. This fact, as well as the fact that there was a settlement agreement between him and the 1st defendant, were kept hidden from the trial judge who heard the *ex parte* applications. We found in these circumstances no error in law or any failure of appreciation of the evidence on the part of the trial judge or the deputy registrar. The award was consistent with the principles adumbrated in persuasive cases such as *Air Express Ltd v. Ansett Transport Industries (Operations) Pty Ltd (supra)* and *Sunseekers Pte Ltd v. Jsh Joshua (supra)*, referred to earlier. We were also unanimous in finding the quantification of the damages was in accordance with established principles, in particular in calculating damages with reference to interest for loss of use of monies, as approved by the Federal Court in *Newacres Sdn Bhd v. Sri Alam Sdn Bhd (supra)*.

**[36]** For these reasons, we dismissed the appeal unanimously with fixed costs of RM50,000 for this appeal, the costs of the appeal in the High Court Kuantan and the costs for the assessment of damages by the Registrar of the High Court, to be paid by the appellant to the respondents. The deposit of RM500 was ordered to be paid to the respondents.

**[37]** I have shown the draft judgment to my learned brother Datuk Clement Allan Skinner, JCA and he has kindly agreed with it.

**[38]** My learned brother Dato' Abdul Malik bin Ishak, JCA has since written a supporting judgment.

**Abdul Malik Ishak JCA:**

**[39]** This is my supporting judgment to that of the judgment of Dato' Mohamad Ariff bin Md Yusof, JHC wherein this court dismissed the appeal of the appellant plaintiff with fixed costs of RM50,000 before this court as well as before the deputy registrar and before the High Court Judge. The decision of the High Court was affirmed and the deposit should rightly go to the respondents/ defendants.

**[40]** The measure of damages to be awarded to an aggrieved party has been restated in many ways by Viscount Sankey LC in *Banco de Portugal v. Waterlow And Sons, Limited; Waterlow And Sons, Limited v. Banco de Portugal* [1932] AC 452, HL at 474; by Lord Wright in *Monarch Steamship Co, Limited v. Karlshamns Oljefabriker (a/b)* [1949] AC 196, HL at 221; by Earl Jowitt in *British Transport Commission v. Gourley* [1956] AC 185, HL at 197; by Lord Upjohn in *Koufos v. C Czarnikow Ltd* [1969] 1 AC 350, HL at 420; by Lord Wilberforce in *General Tire & Rubber Co v. Firestone Tyre & Rubber Co Ltd* [1975] 1 WLR 819, HL; by Lord Lowry in *Swingcastle Ltd v. Alastair Gibson (A Firm)* [1991] 2 AC 223, HL at 232D; and by Lord Jauncey of Tullichettle in *Alfred McAlpine Construction Ltd v. Panatown Ltd* [2001] 1 AC 518, HL at 562G. And all these eminent Law Lords derived their inspiration from the speech of Lord Blackburn in *Livingstone v. The Rawyards Coal Company* [1880] 5 App Cas 25, HL at 39 when his Lordship said about the measure of damages in these erudite terms:

> that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

**[41]** Asquith LJ in *Victoria Laundry (Windsor) Ltd v. Newman Industries Ltd; Coulson & Co Ltd (Third Parties)* [1949] 2 KB 528, CA at p. 539 aptly said about the measure of damages in this way:

> It is well settled that the governing purpose of damages is to put the party whose rights have been violated in the same position, so far as money can do so, as if his rights had been observed.

**[42]** Lord Diplock in *Albacruz (Cargo Owners) v. Albazero (Owners)* [1977] AC 774, HL at 841C described the purpose of awarding damages in these words:

> to put the person whose right has been invaded in the same position as if it had been respected so far as the award of a sum of money can do so.

**[43]** This appeal concerned the damages awarded against the appellant based on the appellant's undertaking to pay damages pursuant to the four interim injunctions. There were concurrent findings by the deputy registrar and the High Court Judge and there were no exceptional circumstances shown to warrant any interference by this court.

**[44]** In this appeal, the appellant who was the plaintiff at the High Court, had obtained four *ex parte* injunction orders which effectively destroyed the companies belonging to the first respondent - Dato' Lim Ah Chap. The injunction orders were couched in extremely wide terms and circulated to the banks thereby cutting off the credit lines and banking facilities enjoyed by the companies.

**[45]** Earlier on, the companies had been sold to the first respondent by the appellant and that sale saw the appellant divesting his 50% stake in the companies under the settlement agreement entered between the appellant and the first respondent. The injunction orders effectively destroyed the companies which the appellant had earlier sold to the first respondent.

**[46]** It was an undisputed fact that the companies had a value of RM40 million. This was admitted by the appellant at the inquiry before the deputy registrar.

**[47]** The injunction orders were eventually set aside by Dato' Ramly Ali JC (now JCA) as reflected in his judgment which has since been reported (see [2002] 2 CLJ 250). In his judgment, his Lordship made critical observations pertaining to the appellant's conduct and he also directed an immediate enquiry into damages based on the undertaking as to damages given by the appellant.

**[48]** The deputy registrar conducted the enquiry where 17 witnesses were called and the notes of evidence spilled to over 185 pages. At the end of that enquiry, the deputy registrar awarded damages totalling RM17,887,038.70 to all the respondents. Aggrieved, the appellant appealed to the High Court Judge pursuant to O. 56 of the Rules of the High Court 1980. His Lordship Dato' Abdul Halim Aman, High Court Judge, upheld the award of the deputy registrar but reduced it to a correct mathematical figure of RM17,847,041.60. Aggrieved, the appellant now appeals to this court.

**[49]** The undertaking as to damages given by the appellant must "be worth powder and shot" (*Commodity Ocean Transport Corporation v. Basford Unicorn Industries Ltd* (The "*Mito*") [1987] 2 Lloyd's Rep 197 at p. 198) and the ability of the appellant to honour his undertaking was a material factor in the balance of convenience (see the *American Cyanamid Co v. Ethicon Ltd* [1975] 1 All ER 504, HL at p. 510).

**[50]** The true nature of the undertaking was explained by Turner LJ in *Newby v. Harrison* [1861] 3 De GF & J 287 at p. 290 in this way:

> The true principle appears to me to be this, that a party who gives an undertaking of this nature puts himself under the power of the Court, not merely in the suit but absolutely; that the undertaking is an absolute undertaking that he will be liable for any damages which the opposite party may have sustained, in case the Court shall ultimately be of opinion that the order ought not to have been made.

**[51]** It must be borne in mind that the undertaking is not between the parties. Rather it is between the party giving the undertaking and the court.

**[52]** The purpose of the undertaking can be described in this way. In the event the interlocutory injunction is being discharged, the plaintiff has to compensate the defendant for all losses or

damages which the court is of the opinion was caused as a result of the injunction. According to *Halsbury's Laws of England*, 4th edn. vol. 24, at para. 1072, it is the price which the person asking for an interlocutory injunction has to pay for it. Such an undertaking is an absolute undertaking. And that being the case, the appellant here will be liable for any damages which the first respondent may have sustained.

**[53]** And according to Plowman J in *Ushers Brewery Ltd v. PS King & Co (Finance) Ltd* [1972] Ch 148 at 154C, the undertaking becomes enforceable by way of an inquiry as to damages in the following sets of circumstances:

(a) when the plaintiff has failed on the merits at the trial; or

(b) when it is established before trial that the injunction ought not to have been granted in the first place; or

(c) when it is established, after trial, by an unsuccessful defendant, that the injunction ought not to have been given.

**[54]** It was argued that the *ex parte* injunctions lasted for only 14 days and it was perplexing how that could have caused the respondents to suffer any loss. But the deceit and the non-disclosure of material facts as alluded to by my learned brother Dato' Mohamad Ariff bin Md Yusof, JHC were the special features of this case that made it different from the rest. It must be borne in mind that damages for deceit are not limited to those categories which are reasonably foreseeable. In fact, the damages recoverable can include consequential loss suffered by reason of wide circulation to the banks (*Doyle v. Olby (Ironmongers) Ltd And Others* [1969] 2 QB 158, CA). The measure of damages for deceit falls in a special category regulated by the principles of Doyle.

**[55]** The following principles ought to apply in assessing the damages payable by the appellant when there were deceit and the non-disclosure of material facts bordering on fraudulent conduct which were circulated to the banks:

(a) the appellant must make reparation of all the damages directly flowing from it;

(b) although the damages need not have been foreseeable, yet it must have been directly caused by the appellant;

(c) in assessing the damages, the first respondent is entitled to recover the full purchase price paid by the first respondent for purchasing the companies from the appellant; and

(d) the first respondent is also entitled to recover consequential loss caused by the appellant and incurred by the first respondent.

**[56]** This is a case where the appellant has obtained the *ex parte* injunctions in a deceitful way and with malicious intent. With respect, the appellant should be held responsible for all losses directly caused by the *ex parte* injunctions regardless of its foreseeability.

**[57]** Sufficient evidence was led to demonstrate the damages incurred by all the respondents. This was not the case where the respondents wrote down the particulars of their damages and threw them to the court and demanded for it (to borrow the words of Lord Goddard in *Bonham-Carter v. Hyde Park Hotel, Limited* [1948] 64 TLR 177).

**[58]** For the reasons adumbrated above, I fully support the judgment of my learned brother Dato' Mohamad Ariff bin Md Yusof J and the orders made by him.